

REMARKS

Applicant, by the amendments presented above, has made a concerted effort to present claims which more clearly define over the prior art of record, and thus to place this case in condition for allowance. Currently, claims 1-59 are pending and claims 1-18 have been examined.

Priority Claim

The Examiner advises that the Petition to Accept Unintentionally Delayed Priority Claim was forwarded to the Office of Petitions for a decision. Applicant advises that the Petition was granted on August 1, 2005. Therefore, Applicant requests acknowledgment of completion of its priority claim.

Applicant submits that the certified copy of NZ504439 dated May 10, 2000 was filed in the parent application Serial No. 09/850,797, now United States Patent No. 6,769,431, on May 5, 2003 and was accepted by the Examiner in the Notice of Allowance on June 17, 2003.

Applicant submits that the certified copy of NZ509041 having a filing date of December 20, 2000 was filed on May 5, 2003 in the parent application. Applicant requests to be advised if a new certified copy of NZ509041 must be filed in this application to complete the priority claim.

Otherwise, Applicant requests acknowledgment of completion of its priority claim.

Double Patenting

Claims 1-18 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of United States Patent No. 6,769,431 to Smith in view of United States Patent No. 6,523,538 to Wikefeldt. Applicant

has concurrently filed a Terminal Disclaimer with regard to United States Patent No. 6,769,431 to Smith. Entry and acceptance of same is requested.

Claim Rejections - 35 U.S.C. §102

Claims 1-3 and 5-7 under 35 U.S.C. §102(a) and/or 102(e) as allegedly being anticipated by United States Patent No. 6,523,538 to Wikefeldt. Reconsideration and withdrawal of this rejection is requested.

Claim 1 has been amended to specify in the preamble "A limb for a breathing circuit comprising:" and in the body of the claim "wherein said limb is an expiratory limb of the breathing circuit" in order to ensure that the limitation "wherein said limb is an expiratory limb of the breathing circuit" is given patentable weight.

Applicant submits that the term "breathing circuit limb" has an established meaning in the art and is restricted to the inspiratory tubing and/or expiratory tubing. The term "limb" is understood by one of ordinary skill in the art to exclude further breathing circuit components, installed in series or parallel, between the inspiratory limb and the expiratory limb, such as an in-line medical dryer as is disclosed in Wikefeldt. Applicant notes that throughout the specification of Wikefeldt, the distinction between an inspiratory limb, an expiratory limb, and components such as the dryer and CO₂ absorber is acknowledged and maintained. (column 1, lines 31-34; column 2, line 41; column 3, lines 20-24).

In this regard, claim 1 has been amended to further clarify that the claims are intended to be limited to an expiratory limb of a breathing circuit, as distinguished from in-line medical dryers, such as that disclosed in Wikefeldt.

Therefore, Applicant submits that claim 1 is allowable over Wikefeldt.

Reconsideration and allowance of amended claim 1 is requested.

Claims 2-3 and 5-7 are dependent upon claim 1 which Applicant submits is condition for allowance. Reconsideration and allowance of claims 2-3 and 5-7 is requested.

Claim Rejections - 35 U.S.C. §103

Claim 4 was rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wikefeldt in view of United States Patent No. 3,735,558 to Skarstrom et al. Claim 4 is dependent upon claim 1 which Applicant submits is condition for allowance. Reconsideration and allowance of claim 4 is requested.

Claims 8 and 9 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wikefeldt in view of United States Patent No. 5,233,996 to Coleman et al. Claims 8 and 9 are dependent upon claim 1 which Applicant submits is condition for allowance. Reconsideration and allowance of claims 8 and 9 is requested.

Claims 8, 9 and 13 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wikefeldt. Claims 8, 9 and 13 are dependent upon claim 1 which Applicant submits is condition for allowance. Reconsideration and allowance of claims 8, 9 and 13 is requested. In addition, 2003/0070680 to Smith has a filing date which is after the filing date of the parent application. Because Applicant submits that the specification fully supports the claimed subject matter such that filing date of the parent application should be applied, Applicant submits that this is not a prior art reference.

Claims 8-12 and 14-18 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wikefeldt in view of United States Patent No. 4,337,800 to Carlson. Claims 8-12 and 14-18 are dependent upon claim 1 which Applicant submits is condition for allowance. Reconsideration and allowance of claims 8-12 and 14-18 is requested.

In view of the above Amendments and Remarks, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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